

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Curtis R. Hill, #296024,)	C.A. No. 6:05-1003-HMH-WMC
)	
Plaintiff,)	
)	OPINION AND ORDER
vs.)	
)	
D. Mitchell, Grievance Coordinator)	
at Lee County Correctional Institution; and)	
A. J. Padula, Warden of Lee Correctional)	
Institute,)	
)	
Defendants.)	

This matter is before the court on Curtis R. Hill’s (“Hill”) motion to dismiss his case. On May 2, 2005, the court adopted the Report and Recommendation recommending dismissal of Hill’s complaint filed pursuant to 42 U.S.C. § 1983 and deeming the case a strike pursuant to 28 U.S.C. § 1915(g). The judgment dismissing Hill’s action was filed on May 3, 2005. The instant motion was filed on May 16, 2005. Hill requests that the court dismiss his case and not deem it a strike against him. Hill’s case has already been dismissed. As such, his motion to dismiss is moot. Further, to the extent Hill is moving to alter or amend the judgment deeming this case a strike pursuant to 28 U.S.C. § 1915(g), the court denies Hill’s motion.

A motion to alter or amend a judgment under Rule 59(e) of the Federal Rules of Civil Procedure may be made on three grounds: “(1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice.” Hutchinson v. Staton, 994 F.2d 1076, 1081 (4th Cir. 1993). 28 U.S.C. § 1915(g) provides:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

This case was dismissed on the grounds that it was frivolous. Therefore, this case was properly deemed a strike. As such, there are no grounds to alter or amend the judgment. Based on the foregoing, after a thorough review of the facts and pertinent law, Hill's motion to dismiss is moot because his case has already been dismissed. Further, the court denies Hill's motion to alter or amend the judgment to not deem this case a strike for purposes of 28 U.S.C. § 1915(g).

Therefore, it is

ORDERED that Hill's motion to dismiss is dismissed as moot. It is further

ORDERED that Hill's motion to alter or amend the judgment is denied.

IT IS SO ORDERED.

s/ Henry M. Herlong, Jr.
United States District Judge

Greenville, South Carolina
May 27, 2005

NOTICE OF RIGHT TO APPEAL

The movant is hereby notified that he has the right to appeal this order within thirty (30) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.

